

900 KAR 6:040. Licensure hearings.

RELATES TO: KRS 216B.105

STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 1996 Ky. Acts ch. 371, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040 and 216B.105 authorize the Cabinet for Health Services to provide a due process hearing and issue a final determination on all actions by the Cabinet for Health Services to deny, revoke, modify or suspend a license. Executive Order 96-862 reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services. This administrative regulation sets forth the hearing procedure for licensure actions.

Section 1. Notice of Action and Request for Hearing. Any applicant or licensee who has been notified of the cabinet's decision to deny, revoke, modify or suspend a license to operate a health facility or health service may request an evidentiary hearing for the purpose of appealing the cabinet's decision. The request must be filed with the cabinet within thirty (30) days of the date of mailing of notice of the cabinet's decision.

Section 2. Notice of Hearing. The cabinet shall provide the appellant with notice of date, time and location of the hearing by certified mail at least thirty (30) days before the date of the hearing.

Section 3. Disqualification of Hearing Officer. No hearing officer shall participate in any hearing in which the hearing officer has had within the past twelve (12) months preceding the hearing, any ownership, employment, staff, fiduciary, contractual, creditor, personal, consultative relationship that would preclude the hearing officer from conducting a fair and impartial hearing with the applicant or licensee.

Section 4. Hearing Procedure. (1) Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on issues that may arise during the course of the hearing, including any additional petitions for intervention which may be filed. The hearing officer may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant or licensee may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentations, in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced, any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.

(e) A written statement from any party, or a statement or resolution of a political subdivision, trade association, civic organization or other organization may be received without cross examination, but will be considered only as argument, and not as proof of any matter addressed in these documents

unless the party against whom the document is being offered is allowed to cross-examine the proponent of the document.

(f) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at least seven (7) days before the hearing.

(g) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(h) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time, not to exceed the ten (10) days after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(2) In lieu of an evidentiary hearing, the parties to a proceeding, with the consent of the designated hearing officer, may file written stipulations of relevant facts. The hearing officer may decide the appeal on the basis of such stipulation or may schedule a hearing and take such further evidence as he deems necessary.

(3) The designated hearing officer may, at his discretion, grant a continuance of a hearing in order to secure necessary evidence.

Section 5. Findings and Recommendations. (1) After the hearing, the hearing officer shall prepare written findings of fact and recommendations with a synopsis of the evidence contained in the record on the issues involved. If the applicant or licensee fails to appear and prosecute the appeal, the hearing officer may dismiss or recommend dismissal of the appeal.

(2) The hearing officer shall, within thirty (30) days of the close of the hearing send findings and recommendations by certified mail to the applicant or licensee, to the licensing agency, and to the Secretary of the Cabinet for Health Services. Written exceptions to the recommended decision may be submitted within fifteen (15) days of receipt.

(3) The Secretary of the Cabinet for Health Services shall make a final decision pursuant to subsection (2) of this section within ninety (90) days from the date of the recommended order of the hearing officer.

(4) The decision of the secretary shall be final for purposes of judicial appeal, as set forth in KRS 216B.115. (23 Ky.R. 2382; Am. 2746; eff. 12-18-96.)